

**FINAL STATEMENT OF REASONS
FOR
PROPOSED BUILDING STANDARDS
OF THE
OFFICE OF STATEWIDE HEALTH PLANNING AND DEVELOPMENT

REGARDING THE CALIFORNIA PLUMBING CODE
CALIFORNIA CODE OF REGULATIONS, TITLE 24, PART 5**

The Administrative Procedure Act requires that every agency shall maintain a file of each rulemaking that shall be deemed to be the record for that rulemaking proceeding. The rulemaking file shall include a final statement of reasons. The Final Statement of Reasons shall be available to the public upon request when rulemaking action is being undertaken. The following are the reasons for proposing this particular rulemaking action:

UPDATES TO THE INITIAL STATEMENT OF REASONS:

The Initial Statement of Reasons has been updated as follows:

The Office of Statewide Health Planning and Development (OSHPD) is mandated to adopt the most recent edition of model code, as amended by the Office, pursuant to Health and Safety Code Section 18928. This proposed rulemaking represents the Office's proposal to adopt the 2003 Uniform Plumbing Code (UPC) published by International Association of Plumbing and Mechanical Officials (IAPMO) and carry forward existing California amendments of the 2001 California Plumbing Code (CPC). It was also necessary to propose a few editorial and minor technical modifications to the existing requirements for clarification and consistency within the code as identified below:

Chapter 1

Section 101.17

The Office of Statewide Health Planning and Development promulgates and enforces regulations for hospitals and skilled nursing facilities (SNFs) in California. Historically, the California Building Code has included different requirements for hospital-based skilled nursing units than it has for freestanding SNFs on a hospital license and for separately licensed SNFs.

Section 72103, Title 22, CCR, defines "skilled nursing facility" as "a health facility or a distinct part of a hospital which provides continuous skilled nursing care and supportive care to patients whose primary need is for availability of skilled nursing care on an extended basis." This definition makes no distinction between skilled nursing services that are provided as a distinct part unit in an acute care hospital, as a distinct part in a freestanding building on the hospital license, or a freestanding separately licensed SNF. Therefore, the regulations that apply to skilled nursing services should be the same, regardless of the type of facility in which the services are provided.

The purpose for this change is to make the regulations for skilled nursing facilities the same, whether the facility is a freestanding separately licensed SNF, a freestanding SNF building on a hospital license, or a distinct part SNF unit in a hospital building.

Chapter 4

The 2000 UPC, Section 402.5 language has been changed in the 2003 UPC and Section 402.7 has been omitted in the 2003 UPC, therefore, the corresponding OSHPD amendments are being repealed.

The Plumbing, Electrical, Mechanical and Energy Code Advisory Committee recommended not adopting Table 4-1, and instead to consider referencing or adopting Uniform Building Code Appendix Table 29. OSHPD does not agree with this recommendation, and requests that the item be APPROVAL AS SUBMITTED.

The Office of Statewide Health Planning and Development amends CPC Table 4-1 for application to health facilities. There would be little, if any difference in the fixture requirements applicable to hospitals, skilled nursing facilities, licensed clinics and correctional treatment centers using either of the tables. For other uses, CBC Appendix Table 29 appears to be less restrictive.

OSHPD has determined that switching to the appendix table in the Building Code would require far more time and study than is available in this code cycle, and therefore would not be possible. The Office is willing to meet with our constituents and interested parties to discuss the possibility and ramifications of proposing the adoption of a different table for determining plumbing fixture counts for submittal in a future code cycle.

Table 4-2 is being amended to add Footnote 22. Some hospitals desire a lavatory located directly in the patient rooms so that nursing staff do not have to walk back to the nurses' station handwashing fixture to wash after performing certain tasks. These patient room lavatory fixtures are "bonus fixtures" not required by code. However, when these fixtures are provided, they must meet the same functional requirements as the required handwashing fixture at the nurse station to prevent nursing staff from spreading infections to patients. Specifically, the faucets for these lavatories cannot have conventional lever or handle controls, but must be the type of controls not requiring direct contact of the hands for operation.

This modification will require lavatories located directly in patient rooms have hands-free type controls and a gooseneck faucet as is currently required for handwashing fixtures. This will ensure that "bonus fixtures" which exceed the minimum number required by code will not increase hospital patient infection rates and compromise patient healthcare.

Chapter 5

Section 508.2 is being amended to eliminate seismic category references of model code to avoid conflict with seismic categories used in Title 24.

Chapter 6

The Plumbing, Electrical, Mechanical and Energy Code Advisory Committee recommended further study on this item. OSHPD does not agree with this recommendation, and requests APPROVAL AS SUBMITTED, based on public safety and environmental concerns with the use of this material.

Studies have demonstrated that PEX material is susceptible to chemical leaching, both from the outside environment and chemicals leaching out of the PEX material itself. The layer of aluminum in the PEX-AL-PEX piping may or may not mitigate some of the chemical leaching from the outside environment, but there is no reason to believe that it will have any effect on the leaching from the material itself. As a result of litigation, one PEX manufacturer has disclosed that the material does have chemical leaching problems including MTBE (methyl tertiary butyl ether, a known human carcinogen) and TBA (tertiary butyl alcohol), which are by-products of the manufacturing process.

The manufacturers association's Installation Handbook for PEX indicates several limitations on the use of the product. It is unknown whether these limitations are still applicable with the use of PEX-AL-PEX. These limitations include applications where the water temperature could exceed 180° F. Current code requirements include 180° F water for rinse water at automatic dishwashing equipment and 160° F water for laundry, maintained over the entire wash and rinse period. In order to supply this water temperature at the fixture, it will be necessary to provide hotter water at the source.

Another limitation is not to allow extended contact with a number of "commonly encountered construction materials." One type of material listed is "fire wall penetration sealing compounds," which are used extensively in hospitals and skilled nursing facilities. The Handbook provides an exception for "water soluble, gypsum-based caulking," but this would be difficult to enforce. Materials may be changed from what is approved on the drawings, and there is an enormous variety of construction materials used on hospital projects. Requiring field staff to know the chemical composition of all the materials, and adverse interactions with chemicals found in other materials is not a reasonable expectation.

PEX-AL-PEX is a new material in the 2003 Uniform Plumbing Code. OSHPD is charged with the promulgation of regulations to protect the health and safety of the occupants of hospitals, skilled nursing

facilities, licensed clinics and correctional treatment centers. We must be conservative in the adoption of regulations, considering the vulnerable users of these facilities. Additional research and testing must be performed to demonstrate the safety and reliability of this new material before it can be accepted for use in health facilities.

Chapter 8

The 2003 UPC is consistent with 2003 Uniform Mechanical Code regarding the condensate drain sizing. Therefore, OSHPD amendment Section 815.2.1 is no longer necessary and is being repealed.

Chapter 10

Due to use of new language in 2003 Uniform Plumbing Code, OSHPD is modifying the language used in OSHPD amendment Section 1014.1 to be consistent with the model code.

Chapter 13

Due to renumbering of the Sections in Chapter 13, 2003 Uniform Plumbing Code, OSHPD amendment regarding not adopting the Chapter 13 and adoption of NFPA 99, 2002 is being moved to Section 1301.2.

MANDATE ON LOCAL AGENCIES OR SCHOOL DISTRICTS

The Office of Statewide Health Planning and Development has determined that the proposed regulatory action would not impose a mandate on local agencies or school districts.

OBJECTIONS OR RECOMMENDATIONS MADE REGARDING THE PROPOSED REGULATION(S).

(Government Code Section 11346.9(a)(3))

Commenter #1: Robert Friedlander - Construction Code Consultants

CPC Section 604.1

General: Mr. Friedlander submitted a substantial volume of comments. However, the bulk of these comments addressed subjects that are not within the current rulemaking, and are actually photocopies of documents submitted in response to previous rulemakings regarding the adoption of PEX piping. These comments were addressed in previous rulemaking cycles, and no further response will be provided here.

The following comments were extracted from Mr. Friedlander's letter dated July 31, 2005 to Thomas L. Morrison of the California Building Standards Commission. The comments are regarding OSHPD's proposed amendment to prohibit PEX-AL-PEX piping for health facilities. Mr. Friedlander is challenging this proposed change.

Comment: In his oral testimony, Mr. Friedlander stated, "the code with the OSHPD amendments doesn't allow [water] temperatures to exceed 180 degrees."

Response: While it is true that OSHPD amendments limit the water temperature in fixtures used by patients to 120°F (CPC Section 612.5), the code specifically requires water supplied at much higher temperatures for other hospital uses, for example laundry and dishwashing (CPC Section 612.1). Dish washing rinse water must be supplied at a minimum of 180°F. In order to supply water at this temperature, the water has to be produced at a much higher temperature at the source and carried to the end use through the building's water distribution system. The "Installation Handbook" for cross-linked polyethylene (PEX) published by the Plastic Pipe and Fittings Association states that PEX piping should not be used for water temperatures exceeding 180°F.

Comment: Mr. Friedlander states that His expert (Dr. Michael Hoffmann, a proponent of the use of PEX piping), disagrees with the opposing expert (Mr. Reid, opposed to the use of PEX piping), declaring Mr. Reid's conclusions to be wrong and "not supported by any reasonable data."

Response: The OSHPD cannot act as the arbiter between various technical experts. If anything, the differences of opinions among the experts are a demonstration that further study of the material is needed.

The OSHPD has authority for regulations governing the construction of hospitals and skilled nursing facilities, where the patients are particularly vulnerable, and the continued operation of the facility is critically important. The OSHPD has valid and unanswered concerns regarding the acceptability of using PEX-AL-PEX piping in health facilities.

The manufacturers association Installation Handbook for PEX indicates several limitations on the use of PEX piping, which also apply to PEX-AL-PEX. These include the use of PEX with high temperature water, and the use in contact with commonly encountered construction materials, including fire wall penetration sealants. Both high temperature water and fire wall sealing compounds are frequently used in health facilities.

PEX-AL-PEX is a new material in the 2003 Uniform Plumbing Code. The OSHPD is charged with the promulgation of regulations to protect the health and safety of the occupants of hospitals, skilled nursing facilities, licensed clinics and correctional treatment centers. We must be conservative in the adoption of regulations, considering the vulnerable users of these facilities. Additional research and testing must be performed to demonstrate the safety and reliability of this new material before it can be acceptable for use in health facilities.

Comment: Mr. Friedlander makes many general statements regarding the acceptability of PEX piping, permeability of the material and resistance to leaching, and makes a comparison to plastic water bottles.

Response: In our statement of reasons, OSHPD mentioned concerns about leaching that are found in various writings about PEX, but this has never been the basis of our denial of the use of PEX or PEX-AL-PEX in health facilities. As stated above, our reasons for not adopting the use of PEX-AL-PEX have to do with the manufacturer's own stated limitations and the acceptability of the product in health facilities regulated by OSHPD.

Comment: Mr. Friedlander also goes on to debate whether the use of PEX piping should be subject to CEQA, and he argues that the entire adoption of the building standards code in all its particulars should be subject to a preliminary review under CEQA. He cites the example of the approval of a city's general plan, where it was determined that the review must compare the proposal to existing environmental conditions, not just to the status quo.

Response: It is unclear whether Mr. Friedlander advocates stopping all work on the code adoption until all listed building materials can be evaluated for potential environmental impact, or that no material should be evaluated. Regardless of his intent, it is beyond the scope of this rulemaking, and will not be addressed here.

Commenter # 2: Ms. Sheila Lee, Committee Chair -CALBO State Code Committee

CPC Section 413.1

Comment: Ms. Lee's comment would amend CPC Section 413.1, to not adopt the section referring to CPC Table 4-1. Ms. Lee states that the plumbing fixture count provisions are excessive, and that occupant load factors used in determining the fixture counts are inappropriate. Also, she states that the Minimum Plumbing Fixtures table in the building code (Appendix chapter 29) is easier to apply and enforce, since it is based on occupancy classifications and not descriptions of uses.

Response: Ms. Lee makes good points concerning the use of the plumbing fixture table in her comments. However, the only proposed change OSHPD is making to the table is in reference to lavatories in patient rooms, and therefore the comments are not related to this rulemaking. Additionally, the commenter seeks relief from provisions of the model code, which apply to occupancies not under OSHPD's statutory authority. A state amendment would not be applicable at the local level to produce the result that Ms. Lee is seeking.

DETERMINATION OF ALTERNATIVES CONSIDERED AND EFFECT ON PRIVATE PERSONS

(Government Code Section 11346.9(a)(4))

The Office of Statewide Health Planning and Development has determined that no alternative considered would be more effective in carrying out the purpose for which the regulation is proposed or would be as effective and less burdensome to affected private persons than the adopted regulation

REJECTED PROPOSED ALTERNATIVE THAT WOULD LESSEN THE ADVERSE ECONOMIC IMPACT ON SMALL BUSINESSES: (Government Code Section 11346.9(a)(5))

The proposed regulations will not have and adverse economic impact on small business.

COMMENTS MADE BY THE OFFICE OF SMALL BUSINESS ADVOCATE

(Government Code Section 11347.6)

The Office did not receive comments from the Office of Small Business Advocate.

COMMENTS MADE BY THE TRADE AND COMMERCE AGENCY

(Government Code Section 11347.6)

The Office did not receive comments from the Trade and Commerce Agency.